

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Defendant.

Civil Action No. 17-816 (TJK)

DECLARATION OF RYAN JACKSON

I, Ryan Jackson, declare that the following statements are true and correct to the best of my knowledge, and are based on my personal knowledge, information acquired by me in the course of performing my duties, information contained in the records of the United States Environmental Protection Agency (EPA or Agency), and information supplied to me by current and former EPA employees including employees under my direction.

1. I am the Chief of Staff of the EPA. I have been in this position since February 2017. My responsibilities include serving as a key advisor to EPA Administrator Scott Pruitt, managing daily operations of the EPA, coordinating the Administrator's strategic initiatives, and serving as the principal liaison with the White House. Prior to joining the EPA, I worked in the U.S. Senate, first as counsel to the U.S. Senate Environment and Public Works Committee, and later as chief of staff to U.S. Senator James Inhofe.
2. I am familiar with the Freedom of Information Act (FOIA) request EPA-HQ-2017-004359 submitted by the Center for Biological Diversity (CBD) that is one of the two FOIA requests at issue in the above-captioned matter. This declaration will explain the steps taken to search for documents responsive to CBD's FOIA request, EPA-HQ-2017-004359, and explain the basis for withholding one portion of one responsive record pursuant to FOIA Exemption 6.¹

¹ As discussed in more detail below, Plaintiff has indicated it is limiting its challenge to EPA's withholdings to a single calendar entry redacted under Exemption 6. Therefore, this declaration only addresses the Agency's withholding of the single calendar entry identified by Plaintiff as subject to challenge in this litigation.

FOIA REQUEST EPA-HQ-2017-004359

3. On February 28, 2017, CBD submitted a FOIA request (Exhibit A) using the EPA's FOIAonline² website, seeking "[s]ince February 17, 2017: all calendars and/or schedules, including but not limited to travel itineraries and meeting schedules, of the EPA Administrator Scott Pruitt ('Mr. Pruitt')." Ex. A at 1. On February 28, 2017, FOIAonline generated an automated message to CBD confirming receipt of CBD's FOIA request and provided CBD with assigned tracking number, EPA-HQ-2017-004359. EPA's FOIA Office assigned the request to the Office of Executive Secretariat (OEX), Office of the Administrator on March 1, 2017.

SEARCH FOR AND PRODUCTION OF CALENDAR RECORDS

4. EPA maintains Administrator Pruitt's calendar for meetings and appointments using Microsoft's Outlook calendar application. EPA uses an Outlook account established specifically to maintain the Administrator's schedule. This account is the location where the accurate and complete information regarding the Administrator's schedule is stored. The following steps were taken to respond to CBD's FOIA request for the Administrator's calendar records.

A. First Production of Calendar Records

5. The same day the National FOIA Office assigned the above-referenced request to OEX, the OEX FOIA Coordinator assigned the request to staff member Ana Espinoza. Ms. Espinoza worked with other staff in the Office of the Administrator to search for and collect the responsive calendar records from Microsoft's Outlook calendar application. EPA staff generated a copy of the calendar records using the print functions of the Outlook software to print a Portable Document File (PDF), which contained the data from the Administrator's calendar account. Staff generated the PDF using the date range of February 17, 2017, to February 28, 2017. Ms. Espinoza worked with OEX staff to review and redact the calendar PDF document for FOIA exemptions.
6. On April 19, 2017, OEX completed its review of the responsive records and the Acting OEX Director prepared and signed a final response letter. (Exhibit B). On April 26, 2017, the responsive records and the final response letter were uploaded into the Agency's online FOIA tracking system, FOIAonline. However, due to an inadvertent error, the records and the final response letter were not transmitted to CBD after they were uploaded into the system. After CBD filed the above-captioned complaint on May 3, 2017, OEX staff identified the inadvertent error that had occurred, and transmitted the responsive records to CBD on May 4, 2017 via FOIAonline.

² FOIAonline is the Agency's online FOIA tracking system which the Agency uses to receive and respond to FOIA requests, including to communicate with requesters and to publicly post records released under FOIA.

B. Updated Production of Calendar Records

7. After the Complaint was filed, an attorney from the Office of General Counsel (OGC) reviewed the documents that were produced to CBD. The OGC attorney identified instances where material was redacted under the incorrect FOIA exemption, or where information was redacted that on further review could be released. The OGC attorney determined that the calendar records would need to be re-produced to CBD to address these issues, and worked with OEX staff to review and revise the records.
8. OGC attorneys, including the attorney assigned to this litigation, and OEX staff, were also working on responding to several other FOIA requests seeking a copy of the Administrator's calendar. These requests sought various calendar records including those dated after February 28, 2017. These staff had to coordinate to address the issues noted in the prior paragraph and to collect, review and produce the additional calendar records sought in the FOIA requests.
9. To respond to the multiple FOIA requests pending for the Administrator's calendar, EPA staff in the Office of the Administrator generated a copy of the Administrator's calendar from the Administrator's calendar account covering the period from February 12, 2017, to May 18, 2017.
10. I provided a printed hard copy of that calendar to OGC employees. The printed copy was scanned by EPA staff to convert the document into PDF format for review and redaction under applicable FOIA exemptions. The document was initially reviewed by EPA staff and marked with proposed redactions under FOIA Exemptions 5, 6, 7(A), 7(C) and 7(F), as appropriate. Some information was withheld under multiple exemptions. The document was also reviewed by EPA managers in multiple offices, including OEX and OGC, as well as myself, to assist with ensuring that all nonexempt information was identified and released.
11. On September 27, 2017, the copy of the Administrator's calendar dating from February 12, 2017, to May 18, 2017, was released with redactions to another FOIA requester via email, and later posted to FOIAonline. On October 3, 2017, an OGC attorney provided CBD with a copy of the document via email and explained that the production included updated and corrected redactions for the dates February 17, 2017 to February 28, 2017 that were responsive to CBD's EPA-HQ-2017-004359 request. In the email transmittal, the OGC attorney informed CBD that the documents were also responsive to two of CBD's later-filed FOIA requests that are not referenced in the Amended Complaint, EPA-HQ-2017-006910 & EPA-HQ-2017-008995. (Exhibit C).

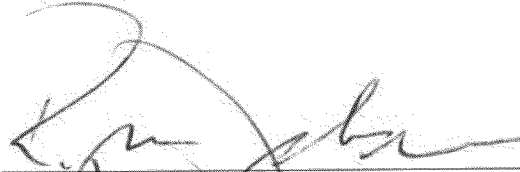
ASSERTION OF FOIA EXEMPTIONS

12. As a result of the meet and confer process regarding the calendar records produced in response to request EPA-HQ-2017-004359, I understand that CBD is challenging EPA's withholding of information under Exemption 6 for the following entry: "A personal meeting occurring after 5:30 PM and before 7:00 PM on Friday, February 24, 2017." EPA's *Vaughn* index of withheld information and the basis for withholding is attached to this declaration as Exhibit D. A copy of the calendar page containing the redacted entry that plaintiff is challenging is attached to this declaration as Exhibit E.
13. EPA withheld information concerning a personal entry that appears on Administrator Pruitt's calendar on the afternoon of February 24, 2017. The entry is designated "unofficial" on the calendar, and is for a 30-minute period between the time of 5:30 PM and 7:00 PM on February 24, 2017.
14. As part of my review of the Administrator's calendar to provide it in response to FOIA request EPA-HQ-2017-004359, I reviewed the entry identified in Paragraph 12 to ensure that it was appropriately redacted as a personal matter. I have confirmed with the Administrator that this was a personal meeting at which no Agency business was conducted.
15. This entry was withheld under Exemption 6. The withheld information is similar to "personnel and medical files and similar files" because the information applies to and is identified with an individual. This entry reflects a personal meeting or event which relates to personal matters of the Administrator. The Administrator has a significant privacy interest in protecting information regarding his limited personal time and time spent attending to personal matters. Additionally, the individual who appears in the Administrator's calendar also has his or her own substantial privacy interests in avoiding public scrutiny of interactions of a personal nature or in avoiding unwanted contact or harassment due to his or her relationship with the Administrator. There is no public interest in information showing that the Administrator had a personal meeting. Release of this information would shed no light on government activities or operations.
16. I also assisted in the response to EPA-HQ-2017-004360, discussed in the declaration of Elizabeth White. I have confirmed with the Administrator that, to the best of his recollection, he did not use a work phone to text about Agency business from February 17, 2017 to February 28, 2017.

17. I have reviewed the responsive records and determined that no other information can be reasonably segregated and released without release of exempt information of the type described above.

Pursuant to 28 U.S.C. § 1746, I hereby affirm under penalty of perjury that the forgoing declaration is true and correct.

Executed this 11th day of April, 2018.

A handwritten signature in black ink, appearing to read 'Ryan Jackson', is written over a horizontal line.

Ryan Jackson
Chief of Staff
Office of the Administrator
U.S. Environmental Protection Agency